

1 THOMAS M. FERLAUTO (SBN 155503)
2 LAW OFFICE OF THOMAS M. FERLAUTO, APC
3 25201 Paseo de Alicia, Suite 270
4 Laguna Hills, California 92653
5 Telephone: 949-334-8650
6 Fax: 949-334-8691
7 Email: TMF@lawofficeTMF.com
8 Attorney for Plaintiff, JOSHUA ASSIFF

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 **JOSHUA ASSIFF,**

12 **Plaintiff,**

13 **v.**

14 **COUNTY OF LOS ANGELES;**
15 **SHERIFF DEPUTY BADGE**
16 **NUMBER 404532;**
17 **And DOES 1 through 10,**

18 **Defendants.**

Case No. 2:22-cv-05367 RGK (MAAx)

**EX PARTE APPLICATION
CONTINUING HEARING ON
MOTION FOR SUMMARY
JUDGMENT; DECLARATION OF
THOMAS M. FERLAUTO IN
SUPPORT THEREOF**

Action Filed: August 3, 2022
Pretrial Conference: July 10, 2023
Trial Date: July 25, 2023

Assigned to: Hon. R. Gary Klausner,
District Judge, Courtroom 850

All Discovery Matters Referred to: Hon.
Maria A. Audero, District Judge

24 TO THE COURT, ALL PARTIES IN THIS ACTION, AND TO THEIR
25 RESPECTIVE ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE THAT Plaintiff, JOSHUA ASSIFF (hereinafter
27 "Plaintiff") hereby makes this ex parte application to continue the hearing on
28

1 Defendant's Motion For Summary Judgment from June 26, 2023 to July 10, 2023 or
2 to otherwise provide Plaintiff with additional time to file his opposition.

3 The undersigned counsel has advised counsel for Defendants COUNTY OF
4 LOS ANGELES and TRAVIS KELLY that such an ex parte request will be made to
5 this Court. Defendant's counsel has indicated that Defendants intend to oppose this
6 application.

7 Plaintiff has not sought or obtained any previous extensions of this deadline.
8 Said continuance is not in violation of the scheduling order in this case. The
9 requested continuance of the hearing will not necessitate a continuance of the trial as
10 the hearing on the motion will be concurrent with the pretrial conference. Such an
11 extension is timely and is in the interest of justice as the continuance is necessary to
12 allow Plaintiff to use as yet uncompleted discovery in Plaintiff's opposition to the
13 motion for summary judgment.

14 On May 12, 2023, the Court denied Defendants' motion to continue trial and
15 other pre-trial deadlines, but permitted the parties to agree to conduct the depositions
16 of the Defendants (who failed to appear at their noticed depositions) after the
17 discovery cut-off. The deposition of Defendant KELLY has been scheduled for May
18 30, 2023, but a date for the deposition of the persons most knowledgeable at
19 Defendant COUNTY OF LOS ANGELES on issues crucial to Plaintiff's claim,
20 initially set for April 26, 2023, has not yet been set.

21 On May 24, 2023, Defendants filed a motion for partial summary judgement
22 set for hearing on June 26, 2023, with an opposition deadline of June 5, 2023. To
23 oppose this motion on the merits, Plaintiff will require the deposition transcript of
24 both Defendant KELLY and the persons most knowledgeable at the COUNTY OF
25 LOS ANGELES. However, the transcript of KELLY's deposition will not be
26 prepared, and the deposition of the COUNTY OF LOS ANGELES will not have even
27 taken place yet. Since Plaintiff's expert needs this discovery to complete his report,
28 even his opinions will not be complete.

1 In the interests of justice, Plaintiff respectfully requests that the hearing on
2 Defendant's Motion For Summary Judgment be continued to July 10, 2023 or that
3 Plaintiff be given additional time to file an opposition so that Plaintiff has a fair
4 opportunity to use this late but crucial discovery in Plaintiff's opposition.

5
6 DATED: May 28, 2022

The Law Office Of Thomas M. Ferlauto, APC

7
8 By: 
9 Thomas M. Ferlauto
10 Attorney For: Plaintiff, JOSHUA ASSIFF
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF THOMAS M. FERLAUTO

I, Thomas M. Ferlauto, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and I am Plaintiff's counsel of record herein. Consequently, I have personal knowledge of the following:

2. Plaintiff is a 21-year old black male and a student at Antelope Valley College where he plays basketball. Plaintiff was driving from his home to a teammate's house in order to carpool to basketball practice. For no apparent reason and without probable cause, KELLY, a male Caucasian motorcycle Sheriff deputy, pulled Plaintiff over. For no apparent reason and without probable cause, KELLY – as well as other deputies who subsequently responded to the call – all tasered, choked, pepper sprayed, beat and arrested Plaintiff. Plaintiff has asserted two causes of action – the First Cause of Action against KELLY for violation of 42 USC § 1983 (arrest without probable cause and with excessive force), and the Second Cause of Action against COUNTY OF LOS ANGELES for violation of 42 USC § 1983 (*Monell* liability).

3. Plaintiff has complied with all of his discovery obligations. Plaintiff appeared for his deposition and gave testimony on April 14, 2023. Plaintiff made his expert witness disclosure -- including expert witness report -- in a timely fashion on May 10, 2023. Defendants have already noticed the deposition of Plaintiff's expert for May 31, 2023.

4. Defendants have not complied with their discovery obligations.

5. The discovery cut-off in this action was and is May 10, 2023.

6. On March 31, 2023, Plaintiff properly noticed KELLY's deposition for April 25, 2023. Plaintiff offered to reset the deposition for any mutually agreeable date prior to the discovery cut-off.

7. On March 31, 2023, Plaintiff properly noticed the deposition of the persons most knowledgeable at COUNTY OF LOS ANGELES about 9 certain

1 relevant topics for April 26, 2023. Plaintiff offered to reset the deposition for any
2 mutually agreeable date prior to the discovery cut-off.

3 8. Defendants failed to offer alternative deposition dates prior to the
4 discovery cut-off for Defendant KELLY, and Defendant KELLY failed to appear for
5 his scheduled deposition on April 25, 2023.

6 9. Defendants failed to offer alternative deposition dates prior to the
7 discovery cut-off for Defendant the COUNTY OF LOS ANGELES, and Defendant
8 the COUNTY OF LOS ANGELES failed to appear for its scheduled deposition on
9 April 26, 2023.

10 10. On May 10, 2023, Defendants brought an ex parte application seeking
11 to continue the trial date and other pre-trial deadlines.

12 11. On May 12, 2023, the Court denied Defendants' motion to continue trial
13 and other pre-trial deadlines, but permitted the parties to agree to conduct the
14 depositions of the Defendants (who failed to appear at their noticed depositions) after
15 the discovery cut-off.

16 12. In response to the Court's order, Defendants offered two dates for the
17 deposition of Defendant KELLY, but then withdrew one of them. Thus, Defendants
18 only offered one available date for Defendant KELLY. Plaintiff accepted that date,
19 and the deposition of Defendant KELLY has been scheduled for May 30, 2023.
20 However, I have been notified that given the Court Reporter's calendar and work
21 flow, the deposition transcript will not be available until after June 5, 2023 – the date
22 that the opposition to Defendants' motion for summary judgment is due.

23 13. For the deposition of the persons most knowledgeable on 9 topics at
24 Defendant the COUNTY OF LOS ANGELES, Defendants offered a partial date with
25 limited time for questioning for one witness on one topic and a partial date with
26 limited time for questioning (during my son's high school graduation ceremony) for
27 another topic. Defendants have not offered a workable mutually agreeable date for
28 the deposition of Defendant the COUNTY OF LOS ANGELES. However, I have

1 been promised that they are working to provide me with dates soon. In any event,
2 the deposition transcript of this deposition will not be available until after June 5,
3 2023 – the date that the opposition to Defendants’ motion for summary judgment is
4 due.

5 12. On May 24, 2023, Defendants filed a motion for partial summary
6 judgement set for hearing on June 26, 2023, with an opposition deadline of June 5,
7 2023. To oppose this motion on the merits, Plaintiff will require the deposition
8 transcript of both Defendant KELLY and Defendant the COUNTY OF LOS
9 ANGELES. However, the transcript of KELLY’s deposition will not be prepared,
10 and the deposition of the COUNTY OF LOS ANGELES will not have even taken
11 place yet. Since Plaintiff’s expert needs this discovery to complete his report, even
12 his opinions will not be complete.

13 13. In the interests of justice, Plaintiff respectfully requests that the hearing
14 on Defendant’s Motion For Summary Judgment be continued to July 10, 2023 or that
15 Plaintiff be given additional time to file an opposition so that Plaintiff has a fair
16 opportunity to use this late but crucial discovery in Plaintiff’s opposition.

17 14. Having reviewed the motion, I can state the depositions of Defendants
18 KELLY and COUNTY OF LOS ANGELES and the updated expert report of Jeff
19 Nobel will be crucial to opposing the motion and establishing the existence of factual
20 issues that need to be tried.

21 I declare under penalty of perjury under the laws of the State of California and
22 the United States of America that the foregoing is true and correct. Executed this
23 28 day of May, 2023 in Orange County, California.

24
25
26
27
28

THOMAS M. FERLAUTO